From: "Miguez, Enrique (CarnCorp)" <EMiguez@carnival.com>
To: "'secretary@fmc.gov'" <secretary@fmc.gov>
Date: Fri, May 23, 2003 4:13 PM
Subject: CARNIVAL CORPORATION - COMMENTS TO PROPOSED RULEMAKING DOCKET No.02-15

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
800 North Capitol Street, NW, Room 1046
Washington, D.C. 20573-0001

Dear Mr. VanBrakle:

Pursuant to your request for comments on the FMC proposed rulemaking, FMC Docket 02-15, attached please find Carnival Corporation & plc ("Carnival") comments on the proposal to amend rules for the establishment of passenger vessel financial responsibility under Sections 2 (Casualty) and 3 (Performance) of Public Law 89-777. These comments are submitted by Carnival on behalf of Carnival Cruise Lines, Princess Cruises, Holland America Line, Costa Cruises, Cunard Line, P&O Cruises, Seabourn Cruise Line, and Windstar Cruises, all of which are owned by or affiliated with Carnival.

We are willing to meet with the Commission to discuss our comments in more detail in the hope of issuing meaningful protection to the U.S. public.
Should you have any questions or require additional information, please do not hesitate to contact the undersigned.

Enrique A. Miguez
Assistant General Counsel
Carnival Corporation
3655 NW 87th Avenue
Miami, FL 33178
E-Mail: emiguez@carnival.com
Phone: (305) 406-4748 Fax: (305) 406-4758

<<Legal-6592-v14-FEDERAL MARITIME COMMISSION DOCKET NO. 02-07.DOC>>

CC: "'generalcounsel@fmc.gov'" <generalcounsel@fmc.gov>

CARNIVAL
CORPORATION

Before the
FEDERAL MARITIME COMMISSION

In the Matter of Financial Responsibility Requirements For Casualty and Nonperformance of Transportation	)))))	**Docket No. 02-15**

I. INTRODUCTION

Carnival Corporation & plc ("Carnival") submits the following comments on the proposal to amend rules for the establishment of passenger vessel financial responsibility under Sections 2 (Casualty) and 3 (Performance) of Public Law 89-777 (Docket No. 02-15). These comments are submitted by Carnival on behalf of Carnival Cruise Lines, Princess Cruises, Holland America Line, Costa Cruises, Cunard Line, P&O Cruises, Seabourn Cruise Line, and Windstar Cruises, all of which are owned by or affiliated with Carnival.

Carnival fully supports the Commission's proposed rulemaking to eliminate the current $15 million ceiling on the amount of financial responsibility coverage required by passenger vessel operators ("PVOs") to indemnify passengers for nonperformance of transportation. Carnival believes, however, that the Commission's proposed ruling sets forth an unnecessarily complicated method of determining the increased amount of financial responsibility. In addition, eliminating a ceiling altogether may significantly burden the cruise industry at a time when the insurance market may not be able to provide the coverage to meet the bond amounts which would be required.

Carnival also believes that affiliated operating companies should be treated as one entity for purposes of the bonding requirement thereby allowing a group of related companies to file one bond to meet their financial responsibility.

The proposed rulemaking also establishes a mandatory alternative dispute resolution ("ADR") for consumers who wish to bring a claim for non-performance of transportation before the Commission in lieu of filing claims pursuant to the procedures set forth in the respective passenger ticket contracts. Carnival believes that establishing a mandatory ADR program falls outside the authority of the Commission and that the implementation of such a procedure should be reconsidered. In the alternative, if the Commission pursues this rulemaking, the ADR program should be strictly and expressly limited to instances where passengers seek refunds for cancelled cruises resulting from an operator's bankruptcy or cessation of business.

We also urge the Commission to publicly support and pursue, in cooperation with private operators such as Carnival, an amendment to current law to extend coverage to US citizens who purchase cruise tickets in the US but who board in foreign ports. Excluding US citizens from the protection afforded by the bond simply because they board at a foreign port is wrong and inconsistent with the sales and marketing practice of the modern cruise industry.

II. THE COMMISSION'S ELIMINATION OF THE $15 MILLION CEILING FOR FINANCIAL RESPONSIBILITY COVERING PERFORMANCE

Carnival supports the elimination of the current ceiling on required coverage for nonperformance of transportation. However, we believe that the Commission proposal to implement a formula based upon the method and timing of payments of customer deposits is not the best approach to the coverage issue. The proposed formula to calculate the necessary coverage is complicated. PVOs will be required to segregate credit card payments from cash payments and then determine how much of the credit card payments were made within 60 days of the applicable sailings. In the context of hundreds of millions of dollars of passenger deposits, this process will require substantial accounting work and will likely require the creation of special software to produce the relevant figures. For instance, Carnival Cruise Lines ("CCL") does not have the procedures or system programs in place to segregate credit card payments by the number of days the payment was received prior to sailing. To review the booking and payment records for the prior two operating years would be a complicated and detailed process of examining each booking record. CCL believes that this review would require a substantial programming effort, would be costly and time consuming.

The proposed rule and formula are also subject to differing interpretations. Each operating line of the Carnival group was asked to calculate its increased coverage requirement based upon the proposed formula using its present record keeping system. Each line responded with a different calculation based upon its interpretation of the proposed rule and its ability to access the information. Although the proposal could be modified to clarify some of the ambiguities, the calculation is not straightforward and it is likely that the Commission would have to periodically audit PVOs to ensure that PVOs are complying with the Commission's intent.

The proposed formula is also subject to manipulation. It is common for cruise operators to require that passengers pay the balance of their cruise fares no later than 60 to 70 days prior to sailing. Pursuant to the proposed formula, all passenger deposits paid with credit cards within 60 days of sailing would be excluded from the calculation of the bonding requirement because such deposits are protected by the credit card companies under the Fair Credit Billing Act (the "FCBA"). As a result, a PVO could adjust its deposit policies to require full payment for some or all of its cruises less than 60 days from sailing (e.g. 58 or 59 days from sailing) thus reducing the bond requirement and shifting the risk of non-performance to the credit card companies at little cost to the PVO. This should not be the preferred manner of increasing the financial responsibility of the industry.

Carnival strongly recommends that the Commission maintain its straightforward method to calculate the coverage amount required based on a percentage of the UPR, as currently defined in the regulations. This calculation is well-known and accepted industry wide and will not present any additional administrative burden or cost at a time when the Commission is seeking to significantly raise the bonding requirements.

While Carnival fully supports increasing the $15 million ceiling on the bond amounts, we believe that eliminating the cap completely would unduly burden the cruise industry relative to other land-based travel operators and providers in the vacation market who do not post government bonds or other security to operate their business. Carnival believes that raising the ceiling to $50 million for single-operators and $100 million for multi-brand operators (as discussed below) would offer significant protection to US consumers. This would constitute a 333% and 666% increase, respectively, over the present cap. Further, a cap, albeit at a much higher level, would allow PVOs (particularly, the small one brand operators) to acquire the necessary coverage from the insurance market at a reasonable cost. Carnival has discussed the Commission's proposal with its sureties currently providing coverage. The industry is facing considerable pressure and we have been advised that there are serious concerns as to the burden the proposed bonding requirements (without a cap) will place on the insurance industry to meet the obligations of all PVOs governed by the regulations. By considerably raising the cap but not eliminating it, the Commission would reduce the demand for new coverage on the insurance industry and address some of the capacity concerns without posing significantly greater risk to the U.S. consumer.

Carnival believes that affiliated entities should be allowed to post one bond on behalf of the entire group. Due solely to its corporate structure, Carnival essentially files six separate bonds/guarantees on behalf of its operating companies. If Carnival were to process all passenger revenue through one company on behalf of all of the brands in the group, only one bond would be required under present regulations. Carnival proposes that the Commission recognize what is already accepted practice by amending the regulations to allow affiliated companies to post a single bond. This would be consistent with the practice of credit rating agencies, the investment community and others who evaluate the creditworthiness and financial strength of commonly owned companies on a consolidated basis.

III. ALTERNATIVE DISPUTE RESOLUTION

Carnival disagrees with the Commission's proposed rulemaking creating an ADR program for claims against the PVOs arising from the nonperformance of transportation. The ADR program would circumvent the terms of the passenger ticket contracts issued by PVOs to consumers. These ticket contracts have been held enforceable by the U.S. courts and have long proven to provide an avenue for redress by the consumer. The proposed mandatory ADR program is also arguably unenforceable.

The Commission cites the Administrative Dispute Resolutions Act ("ADRA") as a basis for its ADR program. The ADRA permits an agency to use an alternative dispute proceeding to resolve an issue in controversy that relates to an administrative program, provided the parties consent to the proceedings. The statute specifically prohibits an agency from requiring a person "to consent to arbitration as a condition of entering into a contract or obtaining a benefit." 5 U.S.C. § 575(a)(3). Furthermore, the underlying legislative history of this section states that such prohibition was intended "to ensure that the use of arbitration is truly voluntary on all sides." Even the FMC's own rules state that arbitration may be used only when all the parties consent. 46 CFR § 502.406(a)(1). If the FMC is mandating arbitration as a condition of obtaining a benefit (the ability to embark passengers at U.S. ports or approval of the bond), it would violate the ADRA. We believe that the mandatory ADR program proposed by the Commission may therefore be unenforceable. We also believe that requiring such an ADR procedure will make it more difficult to obtain bonds or guarantees from current issuers, as they too would be subject to this mandatory proceeding. At a time when the Commission is requiring a substantial increase in the bonding requirement, it should not place further pressure on the market to consent to mandatory ADR proceedings before the Commission.

If, however, the Commission proceeds with an ADR program, we strongly urge that it clarify the proposed rule to limit the proceedings to demands for refunds for cancelled cruises only when the operator declares bankruptcy or otherwise ceases its operations. Otherwise, if left undefined as presently proposed, consumers may erroneously conclude that the Commission may adjudicate complaints unrelated to the narrow issue of non-performance.

IV. TRANSPORTATION IN CONNECTION WITH CRUISE TICKETS SOLD IN THE U.S. FOR VOYAGE WHICH EMBARK AT NON-U.S. PORTS.

Pub. L 89-777's casualty and nonperformance provisions do not extend to cruise packages sold in the U.S. if a vessel does not embark its passengers at U.S. ports. Many PVOs sell tickets in the U.S. to passengers that fly to a foreign port to board the cruise ship. The consequences of this statutory limitation were brought into sharp focus by the recent bankruptcy of operators who were not required to meet the financial responsibility requirements simply because the cruises originated in foreign ports. As a consequence, potentially thousands of U.S. citizens stand to lose anywhere from several hundred to several thousand dollars on the cruises that they had either paid deposits on or prepaid in full.

To address this, section 2(a) could be revised by inserting "or pursuant to ticket contracts sold in the United States," after "embarking passengers at "United States ports"; section 3(a) could be revised by inserting ", or which is to provide transportation pursuant to tickets sold in the United States," after "which is to embark passengers at United States ports".

We again urge the Commission to actively lobby the U.S. Congress to support a change in the law to fully protect U.S. passenger deposits for transportation sold in the United States regardless of where the cruise or transportation may actually be provided.